CHAPTER VII

Minority Rights: Establishment of University

7.1. Introduction

In *Azeez Basha v Union of India*, the Supreme Court has delivered an important judgment deciding over the extent of Constitutional Protection available to Pre- Constitution Minority University.

In most of the cases Courts have upheld the rights of religious and linguistic Minorities under Articles 29 and 30 of Constitution of India. As an ultimate interpreter of the Constitutional rights of the people the Courts have performed its duty as preserver of minority rights against possible violations. It is appreciating to observe that the Courts have been consistent in upholding the minority rights and have been committed to social cause. To substantiate the viewpoint researcher would like to cite a case of *Bombay Education Society v State of Bombay* were High Court of Bombay held that minority rights preserve freedom of choice in education and concomitant right of a parent to direct the education of his child. *In re Kerala Education Bill, 1957 Case* Hon’ble Chief Justice Shri S. R. Das emphasized:

“So long as the constitution stands as it is and is not altered, it is, we conceive, the duty of this court to uphold the fundamental rights (of the minorities) and thereby honour our sacred obligation to the minority communities who are our own.”

*Azeez Basha’s Case* relating to Aligarh Muslim University has been an exception. This is the case in which Supreme Court on narrow, technical
grounds, held that the Muslim community that strived to establish the Aligarh Muslim University with its property, money and considerable endowments had not establish the University, and that provisions of the 1920 Act did not vest the administration in Muslims

H. M. Seervai, a leading Constitutional lawyer, who was also the member of Minority commission, expressed his regret over the view taken by Supreme Court in Azeez Basha’s Case –

“It is the first case in which the Supreme Court has departed from the broad spirit in which it had decided cases on cultural and educational rights of minorities... It is submitted that the decision is clearly wrong and productive of grave public mischief and it should be overruled.”

Researcher hereunder discusses the History of establishment of Aligarh Muslim University, important provisions of 1920 Act, Amendments of 1951 and 1965 which were challenged in the Court, contentions of the parties and the decision of the Court. The decision has been critically analyzed taking into consideration the views of eminent jurist and Constitutional experts. Aligarh Muslim University Act was amended in 1981. The amendments are elaborated for brevity. Relying on the 1981 amendment Aligarh Muslim University reserved 50 per cent seat in for Post Graduate medical Courses for muslims, this was challenged in Allahabad High Court, Where the Court held that Judgment of Azeez Basha still hold good even after 1981 amendment. Double bench too held the same view. The matter is pending in the Supreme Court. While this matter regarding Aligarh Muslim University is yet to be decided by the Apex court, the newly formed National Commission of Minority Education Institute has declared Jamia Milia Islamia University as Minority University. Researcher has discussed the developments leading to such declaration.

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7.2. History of Establishment of Aligarh Muslim University

In 1870 Sir Syed Ahmed Khan thought that, the backwardness of the Muslim community was due to their neglect of modern education. He therefore conceived the idea of imparting liberal education to Muslims in literature and science while at the same time instruction was to be given in Muslim religion and traditions also. With this object in mind, he organized a Committee to devise ways and means for educational regeneration of Muslims and in May 1872 a society called the Muhammadan Anglo-Oriental College Fund Committee was started for collecting subscriptions to realize the goal that Sir Syed Ahmed Khan had conceived. In consequence of the activities of the committee a school was opened in May 1873. In 1876, the school became a High School and in 1877 Lord Lytton, then Viceroy of India, laid the foundation stone for the establishment of a college. The Muhammadan Anglo Oriental College, Aligarh was established thereafter and was, it is said a flourishing institution by the time Sir Syed Ahmed Khan died in 1898.

It is said that thereafter the idea of establishing a Muslim University gathered strength from year to year at the turn of the century and by 1911 some funds were collected and a Muslim University Association was established for the purpose of establishing a teaching University at Aligarh. Long negotiations took place between the Association and the Government of India, which eventually resulted in the establishment of the Aligarh University in 1920 by the 1920-Act. It may be mentioned that before that a large sum of money was collected by the Association for the University as the Government of India had made it a condition that rupees thirty lakhs must be collected for University before it could be established. Further it seems that the existing Muhammadan Anglo Oriental College was made the basis of the University and was made over to the authorities established by the 1920-Act for the administration of the University along with the properties and funds attached to the college, the major part of
which had been contributed by Muslims though some contributions were made by other communities as well.

7.2.1. Major provisions of Aligarh University Act 1920

It is necessary now to refer in some detail to the provisions of the 1920-Act to see how the Aligarh University came to be established. The long title of the 1920-Act is in these words: "An Act to establish and incorporate a teaching and residential Muslim University at Aligarh".

The preamble says that "it is expedient to establish and incorporate a teaching and residential Muslim University at Aligarh, and to dissolve the Societies registered under the Societies Registration Act, 1860, which are respectively known as the Muhammadan Anglo-Oriental College, Aligarh and the Muslim University Association, and to transfer and vest in the said University all properties and rights of the said Societies and the Muslim University Foundation Committee". It will be seen from this that the two earlier societies, one of which was connected with the Muhammadan Anglo Oriental College and the other had been formed for collecting funds for the establishment of the University at Aligarh, were dissolved and all their properties and rights and also of the Muslim University Foundation Committee, which presumably collected funds for the proposed University were transferred and vested in the University established by the 1920-Act.

Section 3 of the 1920-Act laid down that "the First Chancellor, Pro-Chancellor and Vice-Chancellor shall be the persons appointed in this behalf by a notification of the Governor General in Council in the Gazette of India and the persons specified in the schedule [shall be] the first members of the Court" and they happened to be all Muslim. Further s. 3 constituted a body corporate by the name of the Aligarh Muslim University and this body corporate was to have perpetual succession and a Common Seal and could sue and be sued by that name. Section 4 dissolved that Muhammadan Anglo Oriental College and the
Muslim University Association and all property, movable and immovable, and all rights, powers and privileges of the two said societies, and all property, movable and immovable, and all rights, powers and privileges of the Muslim University Foundation Committee were transferred and vested in the Aligarh University and were to be applied to the object and purposes for which the Aligarh University was incorporated. All dates, liabilities and obligations of the said societies and Committee were transferred to the University, which was made responsible for discharging and satisfying them. All references in any enactment to either of the societies or to the said Committee were to be construed as references to the University. It was further provided that any will, deed or other documents, whether made or executed before or after the commencement of the 1920-Act, which contained any bequest, gift or trust in favor of any of the said societies or of the said Committee would, on the commencement of the 1920-Act be construed as if the University had been named therein instead of such society or Committee. The effect of this provision was that the properties endowed for the purpose of the Muhammadan Anglo Oriental College were to be used for the Aligarh University after it came into existence. These provisions will show that the three previous bodies legally came to an end and everything that they were possessed of was vested in the University as established by the 1920-Act. Section 5 provides for the powers of the University including the power to hold examinations and to grant and confer degrees and other academic distinctions.

Section 6 is important. It laid down that "the degrees, diplomas and other academic distinctions granted or conferred to or on person by the University shall be recognised by the Government as are the corresponding degrees, diplomas and other academic distinctions granted by any other University incorporated under any enactment". Section 7 provided for reserve funds including the sum of rupees thirty lakhs. Section 8 provided that "the University shall, subject to the provisions of this Act and the Ordinances, be open to all persons of either sex and of whatever race, creed or class"; which
shows that the University was not established for Muslim alone. Under section 9 the Court was given the power to make Statutes providing that instruction in the Muslim religion would be compulsory in the case of Muslim students. Sections 10, 11 and 12 made other provisions necessary for the functioning of a University but they are not material for our purpose.

Section 13 is another important section. It provided that "the Governor General shall be the Lord Rector of the University". Further sub-section (2) of S. 13 provided that "the Lord Rector shall have the right to cause an inspection to be made by such person or persons as he may direct, of the University, its buildings, laboratories, and equipment, and of the institution maintained by the University, and also of the examinations, teaching and other work conducted or done by the University, and to cause an inquiry to be made in like manner in respect of any matter connected with the University. The Lord Rector shall in every case give notice to the University of his intention to cause an inspection or inquiry." After the enquiry, the Lord Rector had the power to address the Vice-Chancellor with reference to the result of such inspection and inquiry and the Vice-Chancellor was bound to communicate to the Court the views of the Lord Rector with such advice as the Lord Rector might offer upon the action to be taken thereon. The Court was then required to communicate through the Vice-Chancellor to the Lord Rector such action if any as was proposed to be taken or was taken upon the result of such inspection or inquiry. Finally the Lord Rector was given the power where the Court did not, within reasonable time, take action to the satisfaction of the Lord Rector to issue such directions as he thought fit after considering any explanation furnished or representation made by the Court and the Court was bound to comply with such directions. There provisions clearly bring out that the final control in the matter was with the Lord Rector who was the Governor-General of India.
Then comes S. 14 which is again an important provision, which provided for the Visiting Board of the University, which consisted of the Governor, the members of the Executive Council the Ministers, one member nominated by the Governor and one member nominated by the Minister in charge of Education. The Visiting Board had the power to inspect the University and to satisfy itself that the proceedings of the University were in conformity with the Act, Statutes and Ordinances, after giving notice to the University of its intention to do so. The Visiting Board was also given the power, by order in writing, to annul any proceedings not in conformity with the Act, Statutes and Ordinances, provided that before making such an order, the Board had to call upon the University to show cause why such an order should not be made, and to consider such cause if shown within reasonable time. This provision, though not so all-pervasive as the provision in s. 13 of the 1920-Act, shows that the Visiting Board had also certain over-riding power in case the University authorities acted against the Act, Statutes and Ordinances. There is no condition that the Lord Rector and the members of the Visiting Board must belong to the Muslim community.

Sections 15 to 21 are not material for our purposes. They made provisions for officers of the University and Rectors and laid down that "the Powers of officers of the University other than the Chancellor, the Pro-Chancellor, the Vice-Chancellor and the Pro-Vice-Chancellor shall be prescribed by the Statutes and the Ordinances". Section 22 provided for the authorities of the University, namely, the Court, the Executive Council and the Academic Council and such other authorities as might be declared by the Statutes to be authorities of the University. Section 23 provided for the constitution of the Court, and the proviso to sub-section (1) has been greatly stressed on behalf of the petitioners which laid down that "no person other than a Muslim shall be a member thereof". It may be added here that the Select Committee which went into the Bill before the 1920-Act was passed was not very happy about this proviso and observed that:
"In reference to the Constitution of the Court we have retained the provision that no person other than Muslim shall be a member thereof. We have done this as we understand that such a provision is in accordance with the preponderance of Muslim feeling though some of us are by no means satisfied that such a provision is necessary."

By section 23(2), the Court was to be the supreme governing body of the University and would exercise all the powers of the University, not otherwise provided for by the 1920-Act, the Statutes, the Ordinances and the Regulations. It was given the power to review the acts of the Executive and the Academic Councils, save where such Councils had acted in accordance with powers conferred on them under the Act, the Statutes or the Ordinances and to direct that necessary action be taken by the Executive or the Academic Council, as the case might be, on any recommendation of the Lord Rector. The power of making Statutes was also conferred on the Court along with other powers necessary for the functioning of the University.

Section 24 dealt with the Executive Council, s. 25 with the Academic Council and s. 26 with other authorities of the University. Section 27 laid down what the Statutes might provide. Section 28 dealt with the question of the first Statutes and how they were to be amended, repealed and added to. There is an important provision in s. 28 which laid down that "no new Statute or amendment or repeal of an existing Statute shall have any validity, until it has been submitted through the Visiting Board (which may record its opinion thereon) to the Governor General in Council, and has been approved by the latter, who may sanction, disallow or remit it for further consideration." This provision clearly shows that the final power over the administration of the University rested with the Governor General in Council. Section 29 dealt with Ordinances and what they could provide and s. 30 provided which authorities of the University could make Ordinances. Section 30(2) provided that, "the first Ordinances shall be framed as directed by the Governor General in
Council......" and sub-s. (3) thereof laid down that "no new Ordinances, or amendment or repeal of an existing Ordinance shall have any validity until it has been submitted through the Court and the Visiting Board (which may record its opinion thereon) to the Governor General in Council, and has obtained the approval of the latter, who may sanction, disallow or remit it for further consideration". This again shows that even Ordinances could not be made by the University without the approval of the Governor General in Council. If any dispute arose between the Executive and the Academic Council as to which had the power to make an Ordinance, either Council could represent the matter to the Visiting Board and the Visiting Board had to refer the same to a tribunal consisting of three members, one of whom was to be nominated by the Executive Council, one by the Academic Council, and one was to be a Judge of the High Court nominated by the Lord Rector. This again shows that in the matter of such disputes, the Court which is called the supreme governing body of the University did not have the power to resolve it.

Section 31 provided for the making of Regulations, which had to be consistent with the Statutes and Ordinances. It is only the Regulations which did not require the approval of the Governor General before they came into force.

Section 32 provided for admission of students to the University and sub-s. (4) thereof provided that "the University shall not save with the previous sanction of the Governor General in Council recognize (for the purpose of admission to a course of study for a degree) as equivalent to its own degrees, any degree conferred by any other University or as equivalent to the Intermediate Examination of an Indian University, any examination conducted by any other authority". This shows that in the matter of admission the University could not admit students of other institutions unless the Governor General in Council approved the degree or any other examination of the institutions other than Indian Universities established by law. Section 33 provided for examinations, s. 34 for annual report and s. 35 for annual accounts. Section 36 to 38, provided for supplementary matters like, conditions of service of officers and teachers, provident and pension funds, filling of casual vacancies and are not material.
for our purposes. Section 39 laid down that "no act or proceeding of any authority of the University shall be invalidated merely by reason of the existence of vacancy or vacancies among its members". Section 40 is important and laid down that "if any difficulty arises with respect to the establishment of the University or any authority of the University or in connection with the first meeting of any authority of the University, the Governor General in Council may by order make any appointment or do anything which appears to him necessary or expedient for the proper establishment of the University or any authority thereof or for the first meeting of any authority of the University." This again shows the power of the Governor General in Council in the matter of establishment of the University.

This brings us to the end of the sections of the 1920-Act. There is nothing anywhere in any section of the Act which vests the administration of the University in the Muslim community. The fact that in the proviso to s. 23(1) it is provided that the Court of the University shall consist only of Muslims does not necessarily mean that the administration of the University was vested or was intended to be vested in the Muslim minority. If anything, some of the important provisions to which we have already referred show that the final power in almost every matter of importance were in the Lord Rector, who was the Governor General or in the Governor General in Council.

This was followed with the schedule which provided for the first Statutes of the Aligarh University. These Statutes provided for the Rectors of the University, the Vice-Chancellor, Pro-Vice-Chancellor, Treasurer, Register, Proctor and Librarian, the Court, constitution of the Court, the first Court, meetings of the Court and the powers of the Court, the Executive Council, the powers of the Executive Council, the Academic Council and its powers, departments of studies, appointments, register of graduates, convocations, Committees and so on. The Annexure to the 1920-Act gave the names of the Foundation Members
of the Court numbering 124 who were all Muslims and who were to hold office for five years from the commencement of the Court.

7.2.2. Amendments of 1951 and 1965

In 1951, the 1951-Act was passed. It made certain changes in the 1920-Act mainly on account of the coming into force of the Constitution. Here reference is made in regards only to such changes as are material for research purposes. The first material change was the deletion of s. 9 of the 1920-Act which gave power to the Court to make Statutes providing for compulsory religious instruction in the case of Muslim students. This amendment was presumably made in the interest of the University in view of Art.28(3) of the Constitution which lays down that "no person attending any educational institution recognized by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto." It was necessary to delete s. 9 as otherwise the University might have lost the grant which was given to it by the Government of India. Further s. 8 of the 1920-Act was amended and the new section provided that "the University shall be open to persons of either sex and of whatever race, creed, caste, or class, and it shall not be lawful for the University to adopt or impose on any person, any test whatsoever of religious belief or profession in order to entitle him to be admitted therein, as a teacher or student, or to hold any office therein, or to graduate thereat, or to enjoy or exercise any privilege thereof, except in respect of any particular benefaction accepted by the University, where such test is made a condition thereof by any testamentary or other instrument creating such benefaction." The new s. 8 had also a proviso laying down that "nothing in this section shall be deemed to prevent religious instruction being given in the manner prescribed by the Ordinances to those who have consented to receive it". Clearly section 9 was
deleted and s. 8 was amended in this manner to bring the law into conformity with the provisions of the Constitution and for the benefit of the University so that it could continue to receive aid from the Government. Some amendment was also made in s. 13 in view of the changed constitutional set-up and in place of the Lord Rector, the University was to have a Visitor. Section 14 was also amended and the power of the Visiting Board was conferred on the Visitor by addition of a new sub-s. (6).

The next substantial change was that the proviso to s. 23(1) which required that all members of the Court would only be Muslims was deleted. Other amendments are not material for our purpose as they merely relate to administrative details concerning the University.

It will thus be seen that by virtue of the 1951-Act non-Muslims could also be members of the Court. But the Court still remained the supreme governing body of the University as provided by s. 23(1) of the 1920-Act. It is remarkable that though the proviso to s. 23(1) was deleted as far back as 1951, there was no challenge to the 1951 Act till after Ordinance No. II of 1965 was passed. The reason for this might be that there was practically no substantial change in the administrative set-up of the 1920-Act and it was only when a drastic change was made by the Ordinance of 1965, followed by the 1965-Act, that challenge was made not only to the 1965 Act but also to the 1951 Act in so far as it did away with the proviso to s. 23(1).

This brings us to the changes made in the 1965-Act which have occasioned the present challenge. The main amendment in the 1965-Act was in s. 23 of the 1920-Act with respect to the composition and the powers of the Court of the University. Sub-sections (2) and (3) of the 1920-Act were deleted, with the result that the Court no longer remained the supreme governing body and could no longer exercise the powers conferred on it by Sub-ss. (2) and (3) of s. 23. In place of these two sub-sections, a new sub-section (2) was put in which reduced the functions of the Court to three only, namely,
"(a) to advise the Visitor in respect of any matter which may be referred to the Court for advise;

(b) to advise any other authority of the University in respect of any matter which may be referred to the Court for advise; and

(c) to perform such other duties and exercise such other powers as may be assigned to it by the Visitor or under this Act".

It further appears from the amendments of Sections 28, 29, 34 and 38 that the powers of the Executive Council were correspondingly increased. The Statutes were also amended and many of the powers of the Court were transferred by the amendment to the Executive Council. Further the constitution of the Court was drastically changed by the amendment of the 8th Statute and it practically became a body nominated by the Visitor except for the Chancellor, the Pro-Chancellor, the members of the Executive Council who were ex-officio members and three members of Parliament, two to be nominated by the speaker of the House of the People and one by the Chairman of the Council of States. Changes were also made in the constitution of the Executive Council. Finally the 1965-Act provided that "every person holding office as a member of the Court or the Executive Council, as the case may be, immediately before the 20th day of May 1965 (on which date Ordinance No. II of 1965 was promulgated) shall on and from the said date cease to hold office as such". It was also provided that until the Court or the Executive Council was reconstituted, the Visitor might by general or special order direct any officer of the University to exercise the powers and perform the duties conferred or imposed by or under the 1920-Act as amended by the 1965-Act on the Court or the Executive Council as the case may be.

7.2.3. Major Contention of petitioners
In this case the point at issue was the constitutional validity of the Aligarh Muslim University Amending Acts of 1951 and 1965. The contention of the petitioners was that by these drastic amendments in 1965 the Muslim minority was deprived of the right to administer the Aligarh University and that this deprivation was in violation of Article 30(1) of the Constitution.

The main provisions of the Amending Acts under dispute were that
(a) the 1951 Act deleted section 9 of the 1920 Act under which the university court had power to make statutes providing for compulsory religious instructions in case of Muslim students;
(b) it amended section 8 of 1920 Act to the effect, in the main, that it would be unlawful for the university "to adopt or to impose on any person, any test whatsoever of religious belief or profession' for the sake of securing admission in the university;
(c) and deleted proviso to section 23(1) of 1920 Act which required that all members of the court would only be Muslims;
(d) the 1965 Act drastic took away their right to administer guaranteed in Article 30(l) of the Constitution.

7.2.4. Contention of Respondents
The respondents, however, contended that the Aligarh University was established not only by the Muslims but by the Government of India by virtue of a Statute and, therefore, the Muslim minority could not claim any fundamental right to administer the Aligarh University under Article 30(1).

The words in Article 30(1) “Establish and Administer” to be read conjunctively. Under Article 30 (1) "all minorities whether based on religion or language shall have the right to establish and administer educational institutions of their choice". The Court proceeded on the assumption that Muslims were a minority based on religion and Article 30(1) conferred on religious minority community to establish and administer educational institutions of their choice meaning
thereby that where a religious minority establishes an educational institution, it will have the right to administer that.

It was argued that even though the religious minority may not have established the educational institution, it will have the right to administer it, if by some process it had been administering the same before the Constitution came into force.

The Court was of the opinion, that the minority will have the right to administer educational institutions of their choice provided they have established them, but not otherwise. The Article cannot be read to mean that even if the educational institution has been established by somebody else, any religious minority would have the right to administer it because, for some reason or other, it might have been administering it before the Constitution came into force. The words "establish and administer" in the Article must be read conjunctively and so read it gives the right to the minority to administer an educational institution provided it has been established by it. The Court opined that the two words in Article 30(1) must be read together and so read the Article gives the right to the minority to administer institutions established by it. If the educational institution has not been established by a minority it cannot claim the right to administer it under Article 30 (1).

**Crucial Question was:** Whether the Aligarh University was established by the Muslim minority?

If it was established by Muslim minority, the minority would certainly have the right to administer it and not otherwise.

The Court began with the presumption that the words "educational institutions" are of very wide import and would include a university also. This was not disputed on behalf of the Union of India and therefore it may be accepted that a religious minority had the right to establish a university under Article 30(1)
Court held That: Aligarh Muslim university was established by the Central Legislature by the 1920-Act and not by Muslim minority.

The position with respect to the establishment of Universities before the Constitution came into force in 1950 was this. There was no law in India which prohibited any private individual or body from establishing a university and it was therefore open to a private individual or body to establish a university. Thus in law in India there was no prohibition against establishment of universities by private individuals or bodies and if any university was so established it must of necessity be granting degrees before it could be called a university. But though such a university might be granting degrees it did not follow that the Government of the country was bound to recognize those degrees. As a matter of fact as the laws stood up to the time the Constitution came into force, the Government was not bound to recognize degrees of universities established by private individuals or bodies and generally speaking the Government only recognized degrees of universities established by it by law. No private individual or body could before 1950 insist that the degrees of any university established by him or it must be recognized by Government. Such recognition depended upon the will of Government generally expressed through statue. The importance of the recognition of Government in matters of this kind cannot be minimized. This position continued even after the Constitution came into force. It was only in 1956 that by sub-. (1) of S. 22 of University Grants Commission Act, (No. 3 of 1956) it was laid down that "the right of conferring or granting degrees shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University under section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees". Sub-section (2) thereof further provided that "save as provided in sub-s. (1), no person or authority shall confer, or grant, or hold himself or itself as entitled to confer or grant any degree". Section 23 further prohibited the use of the word "university" by an educational institution unless it is established by
law. It was only thereafter that no private individual or body could grant a degree in India. Therefore it was possible for the Muslim minority to establish a university before the Constitution came into force, though the degrees conferred by such a university were not bound to be recognized by Government.

Therefore when the Aligarh University was established in 1920 and by S. 6 its degrees were recognized by Government, an institution was brought into existence which could not be brought into existence by any private individual or body for such individual or body could not insist upon the recognition of the degrees conferred by any university established by it. The enactment of S. 6 in the 1920-Act is a very important circumstance which shows that the Aligarh University when it came to be established in 1920 was not established by the Muslim minority, for the minority could not insist on the recognition by Government of the degrees conferred by any university established by it.

There was no Aligarh University existing till the 1920-Act was passed. It was brought into being by the 1920-Act and therefore Court held to have been established by the Central Legislature which by passing the 1920-Act incorporated it. The fact that it was based on the Muhammadan Anglo Oriental College would make no difference to the question as to who established the Aligarh University. The Court was clear as to who established the Aligarh University that is that it was the Central Legislature by enacting the 1920-Act that the established the said University. The Court had said that the Muslim minority could not establish a university whose degrees were bound to be recognized by Government as provide by s. 6 of 1920-Act; that one circumstance along with the fact that without the 1920-Act the University in the form that it had, could not come into existence shows clearly that the Aligarh University when it came into existence in 1920 was established by the Central Legislature by the 1920-Act. It may be that the 1920 Act was passed as a result of the efforts of the Muslim minority. But that does not mean that the
Aligarh University when it came into being under the 1920-Act was established by the Muslim minority.

**Court interpreted the word “establish” in Article 30(1) as "to bring into existence".**

The Court referred to many dictionaries to ascertain the meaning of the word “Establish”. In Bouvier's Law Dictionary, Third Edition, Vol. I, it has been said that the word "establish" occurs frequently in the Constitution of the United States and it is there used in different meanings; and five such meanings have been given, namely (1) to settle firmly, to fix unalterably, as to establish justice; (2) to make or form : as, to establish a uniform rule of naturalization; (3) to found, to create, to regulate; as, Congress shall have power to establish post offices; (4) to found, recognize, confirm or admit : as, Congress shall make no laws respecting an establishment of religion; (5) to create, to ratify, or confirm, as We, the people, etc., do ordain and establish this Constitution. Thus it cannot be said that the only meaning of the word "establish" is to found in the sense in which an institution is founded and court wanted to see in what sense the word has been used in our Constitution in the Article. In Shorter Oxford English Dictionary, Third Edition, the word "establish" has a number of meanings i.e. to ratify, confirm, settle, to found, to create. Here again founding is not the only meaning of the word "establish" and it includes creation also. In Webster' Third New International Dictionary, the word "establish" has been given a number of meanings, namely, to found or base squarely, to make firm or stable, to bring into assistance, create, make, start, originate. It will be seen that here also founding is not the only meaning; and the word also means "to bring into existence". The court was of the opinion that for the purpose of Art30 (1) the word meant "to bring into existence", and so the right given by Art. 30(1) to the minority is to bring into existence an educational institution, and if they do so, to administer it. We have therefore to see what happened in 1920 and who brought the Aligarh University into existence.
Court held that: Aligarh Muslim University was established by a 1920 -Act passed by Central legislature and not by muslim minority and therefore no amendment of the Act can be struck down as unconstitutional under Article 30(1).

From the history we have set out above, it will be clear that those who were in-charge of the Muhammadan Anglo Oriental College, the Muslim University Association and the Muslim University Foundation Committee were keen to bring into existence a university at Aligarh. There was nothing in laws then to prevent them from doing so, if they so desired without asking Government to help them in the matter. But if they had brought into existence a university on their own, the degrees of that university were not bound to be recognised by Government. It seemed to the court that it must have been felt by the persons concerned that it would be no use bringing into existence a university, if the degrees conferred by the said university were not to be recognised by Government. That could have been the reason why they approached the Government for bringing into existence a university at Aligarh, whose degrees would be recognised by Government and that is why according to the court, S. 6 of the 1920-Act laying down that "the degrees, diplomas and other academic distinctions granted or conferred to or on persons by the university shall be recognised by the Government....." It may be accepted for present purposes that the Muhammadan Anglo Oriental College and the Muslim University Association and the Muslim University Foundation Committee were institutions established by the Muslim minority and two of them were administered by Societies registered under the Societies Registration Act, (No. 21 of 1860). But if the Muhammadan Anglo Oriental College was to be covered into a university of the kind whose degrees were bound to be recognised by Government, it would not be possible for those who were in-charge of the Muhammadan Anglo Oriental College to do so. That is why the three institutions to which we have already referred approached the Government to bring into existence a university whose degrees would be recognised by Government. The 1920-Act
was then passed by the Central Legislature and the University of the Type that was established there under, namely, one whose degrees would be recognized by Government, came to be established. It was clearly brought into existence by the 1920-Act for it could not have been brought into existence otherwise. It was thus the Central Legislature which brought into existence the Aligarh University and must be held to have established it. It would not be possible for the Muslim minority to establish a university of the kind whose degrees were bound to be recognized by Government and therefore it must be held that the Aligarh University was brought into existence by the Central Legislature and the Government of India. If that is so, the Muslim minority cannot claim to administer it, for it was not brought into existence by it. Article 30(1), which protects educational institutions brought into existence and administered by a minority, cannot help the petitioners and any amendment of the 1920-Act would not be ultra vires to Article 30 (1) of the Constitution. The Aligarh University not having been established by the Muslim minority, any amendment of the 1920-Act by which it was established, would be within the legislative power of Parliament subject of course to the provisions of the Constitution. The Aligarh University not having been established by the Muslim minority, no amendment of the Act can be struck down as unconstitutional under Article 30(1).

**Referring to various provisions of 1920 Act the Court held that Aligarh Muslim University was not administered by Muslims**

It was not Muslims only who were administrating Aligarh University. It is true that the proviso to s. 23(1) of 1920-Act said that "no person other a Muslim shall be member of the Court", which was declared to be the supreme governing body of the Aligarh University and was to exercise all the powers of the University, not otherwise provided for by that Act. We have already referred to the fact that the Select Committee was not happy about this provision and

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only permitted it in the Act out of deference to the wishes of preponderating Muslim opinion.

It appeared from paragraph 8 of the Schedule that even though the members of the Court had to be Muslims, the electorates were not exclusively Muslims. For example, sixty members of the Court had to be elected by persons who had made or would make donations of five hundred rupees and upwards to or for the purposes of the University. Some of these persons were and could be non-Muslims. Forty persons were to be elected by the Registered Graduates of the University, and some of the Registered Graduates were and could be non-Muslims, for the University was open to all persons of either sex and of whatever race, creed or class. Further fifteen members of the Court were to be elected by the Academic Council, the membership of which was not confined only to Muslims.

Besides there were other bodies like the Executive Council and the Academic Council which were concerned with the administration of the Aligarh University and there was no provision in the constitution of these bodies which confined their members only to Muslims. It will thus be seen that beside the fact that the members of the Court had to be all Muslims, there was nothing in the Act to suggest that the administration of the Aligarh University was in the Muslim minority as such. Besides the above, we have already referred to S. 13 which showed how the Lord Rector, namely, the Governor General had overriding powers over all matters relating to the administration of the University. Then there was S. 14 which gave certain over-riding powers to the Visiting Board. The Lord Rector was then the Viceroy and the Visiting Board consisted of the Governor of the United Provinces, the members of his Executive Council, the Ministers, one member nominated by the Governor and one member nominated by the Minister in charge of Education. These people were not necessarily Muslims and they had over-riding powers over the administration of the University. Then reference may be made to s. 28(2)(c) which laid down
that no new Statute or amendment or repeal of an existing Statute, made by
the University, would have any validity until it had been approved by the
Governor General in Council who had power to sanction, disallow or remit it for
further consideration. Same powers existed in the Governor General in Council
with respect to Ordinances. Lastly reference may be made to S. 40, which gave
power to the Governor General in Council to remove any difficulty which might
arise in the establishment of the University. These provisions in our opinion
clearly show that the administration was also not vested in the Muslim
minority; on the other hand it was vested in the statutory bodies created by the
1920-Act, and only in one of them, namely, the Court, there was a bar to the
appointment of anyone else except a Muslim, though even there some of the
electors for some of the members included non-Muslims. The Court was
therefore of opinion that the *Aligarh University was neither established nor
administered by the Muslim minority* and therefore there is no question of
any amendment to the 1920-Act being unconstitutional under Article 30(1) for
that Article does not apply at all to the Aligarh University.

7.2.5. Decision

According to the Court there was no dispute that the 1951 and 1965 Acts were
within the competence of Parliament unless they are hit by any of the
constitutional provisions which were referred above. As they were not hit by
any of those provisions, these Acts were good and were not liable to be struck
down *as ultra vires* to the Constitution. The petitions therefore fail and hereby
dismissed. In the circumstances no order was made as to costs.

7.2.6 Critical analyses:

As per Mr H. M. Seervai\(^{203}\) the meaning given by the court to the word
“establish” was not correct. It was not disputed that “to found” is one of the

meanings of the verb “to establish”, and it is submitted that in the context, it is the correct meaning as it is clear from the definition of the verb “to found” namely, “set up or establish (esp. with endowments)”. The Muslim community established the University and provided it with its total endowments. Even if the definition given by court were correct, namely, “to bring the University into existence”, it is submitted that the Muslim community brought the University into existence, namely, by invoking the exercise by the sovereign authority of its legislative power. The Muslim Community provided lands, buildings, Colleges and endowments for the University and, without these, the University as a body corporate would be an unreal abstraction.

Researcher is of the opinion that following dictionary approach to ascertain the meaning of the word “establish” in Article 30(1) made the entire process mechanical. The Court instead could have interpreted the word in reference to Constitution, as an instrument of democracy.

When the Court had already concluded that the Aligarh Muslim University was established by Central legislature’s Act of 1920 then holding that “establish” in Article 30(1) means to “bring into existence” was preformed meaning and seems mere formality.

This case raises very pertinent question: Whether the University incorporated by law at the instance of a minority will become a State-institution?
The Court’s opinion that the Aligarh University has been established by the Act of 1920, is a State-institution, and that that Act was a result of the efforts of the minority was immaterial, gives an affirmative answer.

According to the established procedure already incorporated into the University Grants Commission Act, 1956,—a university has to be incorporated by law. Sections 22 and 23 of this Act provide that only a university incorporated by law is entitled to be called a university and to award degrees. Section 24 makes
contravention of these two sections punishable with fine. Therefore a minority too, must get its university incorporated by law.

A minority then, has a right but not the necessary capacity to establish a university. Besides, if the minority runs an "unincorporated university," it is liable to punishment under section 24 of the University Grants Commission Act, and if it gets the university incorporated by law, its minority character has to be surrendered to the State.

All this conflicts with the Court’s advisory opinion in re Kerala Education Bill case\textsuperscript{204} where the Court held that, while granting aid and recognition to a minority institution, the government cannot demand to surrender of its minority character.

### 1981 Amendment

The 1981 amendment to the AMU Act, which \textit{inter alia} talks of promoting “especially the educational and cultural advancement of the Muslims of India,”

Since, 1920 onwards, the long title and the preamble of the successive versions of the AMU Act read as follows: "An act to establish and incorporate a teaching and residential Muslim university at Aligarh". In 1981 there was a significant alteration, with the much disputed word establish omitted, while it appeared in an altogether different section, namely, clause 1 in section 2. This clause is in fact a definition, a comprehensive definition of the word university which, in the "AMU case, means the educational institution of their choice established by the Muslims of India, which originated as the Muhammedan Anglo-Oriental College, Aligarh, and which was subsequently incorporated as the Aligarh Muslim University”.

Subsequent to the Azeez Basha’s Case judgment of the Hon’ble Supreme Court the Parliament enacted the Aligarh Muslim University Amendment Act 1981 (Act No. 62 of 1981) whereby amongst others the long title as well as Section 2

\textsuperscript{204} AIR 1958 SC 956
(1) and 5 (2) (c) and Section 23 were substituted. The amended sections are reproduced below:--

Section 2 (l) "University" means the educational institution of their choice established by the Muslims of India, which originated as the Muhammadan Anglo-Oriental College, Aligarh and which was subsequently incorporated as the Aligarh Muslim University.

Section 5 (2) (c) to promote especially the educational and cultural advancement of the Muslims of India;

Section 23. The Court – (1) The Court shall consist of the Chancellor the Pro-Chancellor, the Vice-Chancellor and the Pro-Vice-Chancellor (if any) for the time being, and such other persons as may be specified in the Statutes.

(2) The Court shall be the supreme governing body, of the University and shall exercise all the powers of the University not otherwise provided for by this Act, the Statutes, the Ordinances and the Regulations and it shall have power to review the acts of executive and the Academic Councils (save where such Councils have acted in accordance with powers conferred on them under this Act, the Statutes or the Ordinances).

(3) Subject to the provisions of this Act, the Court shall exercise the following powers and perform the following duties, namely:-

(a) to make statutes and to amend or repeal the same;

(b) to consider Ordinances;

(c) to consider and pass resolutions on the annual report, the annual accounts and the financial estimates;

(d) to elect such persons to serve on the authorities of the University and to appoint such officers as may be prescribed by this Act or the Statutes; and
(e) to exercise such other powers and perform such other duties as may be conferred or imposed upon it by this Act or the Statutes."

The amendment made it clear that the Aligarh Muslim University not been "established" by an act, whether in 1920 or 1951, but only "incorporated". Since, on the other hand, it could be argued that the AMU had been "established by the Muslims", nobody could dispute seriously that the said university thus came under the category of minority institutions provided for in Article 30 of the Constitution.

Two other provisions of the 1981 AMU Amendment were seemingly most satisfactory. Firstly, the Court was again recognized as the supreme governing body of the university, and it was considerably enlarged so as to make room for various Muslim constituencies. Secondly, the specific mission of AMU was formally and clearly recognized. Sub-clauses c of section 5 (2) stated that (the university had the powers) “to promote especially the educational and cultural advancement of the Muslims of India”.

**7.2.7. AMU admission policy challenged**

Five connected writ petitions was filed by 34 petitioners who had obtained a degree of MBBS and claimed a right to be considered for admission to Post Graduate Medical Courses of Aligarh Muslim University. For admission to Post Graduate Medical Courses of Aligarh Muslim University three modes had been determined (a) 25% of the total seats were to be filled on the basis of All India Entrance Examination conducted by the All India Institute of Medical Sciences, New Delhi, commonly known as All India Entrance Examination; (b) The remaining 75% of the total seats had been divided to be filled as follows:

(I) 25% of the total sets are required to be filled on the basis of entrance examination conducted by the Aligarh Muslim University in respect of its
internal students commonly known as Entrance Examination for Internal Candidates; and

(II) The remaining 50% of the total seats are to be filled from external as well as Internal candidates on the basis of entrance examination to be conducted by the Aligarh Muslim University. These 50% seats which are required to be filled from internal as well as external candidates on the basis of entrance examination to be conducted by the Aligarh Muslim University was been reserved under resolution of the Admission Committee / Executive Council of Aligarh Muslim University in respect of Muslim candidates only. No reservation has been made for the SC- ST students. This 50 per cent reservation had been effected for 36 different postgraduate courses and involved 2000 seats.

Reservation of the entire 50% of the total seats to be filled on the basis of entrance examination conducted by the Aligarh Muslim University, had given rise to the writ proceedings. The reservation so made by the Aligarh Muslim University in favour of Muslim candidates only on the strength of it being a minority University entitled to the benefit of Article 30 of the Constitution of India was the bone of contention between the parties to these petitions.

In view of the rival contentions raised by the parties which have been briefly noticed herein above the following issues arise for determination by this Court in the present writ petitions:-

1. Whether the Aligarh Muslim University is a minority Institution entitled to protection under Article 30(1) of the Constitution of India and therefore it can provide for reservation of seats for Muslim candidates only. The said issue is to be decided with reference to the following sub-issues:-

(1) Whether the judgment and order of the Hon’ble Supreme Court in the case of Azeez Basha, AIR 1968 Supreme Court 662, is no more a good law in view of the change affected in the statutory provisions, vide amending Act 62 of 1981?
Whether the provisions of Act 62 of 1981 especially Section 2(1) and Section 5 (2) are retrospective in nature and have the effect of declaring Aligarh Muslim University as a minority institution within the meaning of Article 30 of the Constitution?

2. Whether the amended Section 2(1) and 5 (2) (c) are within the legislative competence of the Parliament and whether the said amendments are a brazen attempt to overrule the judgment of the Hon’ble Supreme Court in the case of Azeez Basha?

3. Whether the reservation of the entire 50% seats for Muslims required to be filled on the basis of entrance examination candidates is arbitrary and violative of Article 14 and Article 29(2) of the Constitution of India?

4. Whether the petitioner had any locus to maintain the present writ petitions, and whether the petitions have become in fructuous in view of the subsequent developments?

The effect of Section 3, Section 4 read with Section 6 of the original Act vis-a-vis the University being brought in existence by a legislative Act are the main basis for the decision of the Hon’ble Supreme Court in Azeez Basha. The said sections had not been amended and holds ground even today.

Mere deletion of the word "Establish" from the long title and amendment to Section 2(1), whereby the University has been defined to be an educational institution of their choice, established by the Muslims of India, which originated as M.A.O. college, Aligarh and which was subsequently incorporated as Aligarh Muslim University in itself is not sufficient to hold that the Aligarh Muslim University, which was a creation of a legislative Act, has not been so created. The entire Act has to be read as a whole, amendment in the long title and few sections of the Act are not themselves sufficient for record a finding...
that the Aligarh Muslim University is a minority Institution covered by Article 30 of the Constitution of India.

In view of the aforesaid, the Court was of the opinion that the judgment of the Hon’ble Supreme Court in the case of Azeez Basha was based on over all consideration of the provisions of the Act and the historical background, in which Aligarh Muslim University was brought in existence. Such basis, on which the aforesaid judgment was founded, has not been so fundamentally altered under Act of 1981 so as to create a situation that in the changed circumstances the Court could not have rendered said judgment.

The declaration in that regard under Section 2(1) is on the face of it is an attempt to negate the judgment of the Hon’ble Supreme Court specifically when such declaration has been made without altering the foundation / basis on which the judgment in the case of Azeez Basha was based.

It is held that the judgment of the Hon’ble Supreme Court in the case of Azeez Basha still holds good even subsequent to the Aligarh Muslim University Amendment Act, 1981 (Act No. 62 of 1981). Aligarh Muslim University is not a minority Institution within the meaning of Article 30 of the Constitution of India. Therefore, the University cannot provide any reservation in respect of the students belonging to a particular religious community.

7.2.8. Appeal by all Parties: All parties were aggrieved and the Judgment was appealed in the High court of judicature of Allahabad-----Double Bench

Major issue: The short basic issue in all these appeals is whether the Aligarh Muslim University is a minority Institution. The point arises because suddenly some eighty five years after incorporation, they chose for the first time to reserve a Muslim quota, by way of a 50% reservation of post-graduate course seats meant for qualified MBBS doctors.
The Court upheld his Lordship's main and primary decision in these matters, which is that Basha still holds the field and the 1981 Act must give way before it wherever the two come in conflict.

Appeal to the Supreme Court ---Ordered “Status Quo”

The Supreme Court ordered that `status quo' on the minority status of Aligarh Muslim University be maintained but asked it not to enforce 50 per cent reservation for Muslims in admissions to MD and MS during the pendency of appeals.

A Bench passed this order while admitting appeals filed by AMU and the Centre challenging an Allahabad High Court judgment that it was not a Muslim minority institution within the meaning of Article 30 of the Constitution. Status quo as on the date of filing of the petitions before the High Court would be maintained, said the Bench, consisting of Justices K.G. Balakrishnan and D.K. Jain, implying that AMU would continue to be a minority institution in terms of the 1981 Constitution amendment.

The Court, while issuing notice to the respondent students, referred the matter to a five-judge Constitution Bench.

*Matter is pending in the Court.*

7.3. *Jamia Millia Islamia University declared as minority Institution*

Recently, The National Commission for Minority Educational Institutions (NCMEI) has declared Jamia Millia Islamia, a Central University in New Delhi, to be a minority institution. Its order, issued on February 22, 2011, empowers the university to do away with all existing quota policies for the Scheduled Castes and the Scheduled Tribes and Other Backward Classes (OBCs) and reserve 50 per cent of the seats for Muslim students in all its programmes.
The quasi-judicial body, created by the first United Progressive Alliance (UPA) government to expedite issues relating to minority educational institutions, noted in its order that historical facts established beyond doubt that Jamia Millia Islamia was an institution established and managed by the Muslim community and hence fulfilled the basic criteria of being a minority educational institution under Article 30(1) of the Constitution.

The three-member NCMEI, which is headed by Justice M.S.A. Siddiqui and has Mohinder Singh and Cyriac Thomas as its members, noted: “We have no hesitation in holding that the Jamia was founded by the Muslims for the benefit of Muslims and it never lost its identity as a Muslim minority educational institution. For the foregoing reasons we find and hold that the Jamia Millia Islamia is a minority educational institution covered under Article 30(1) of the Constitution read with Section 2(g) of the National Commission for Minority Educational Institutions Act. A certificate be issued accordingly.”

The NCMEI passed the order on a petition filed before it in 2006 by the Jamia Teachers Association, the Jamia Students Union, the Jamia Old Boys' Association and some local community members following the Central government’s directive to all institutions of higher education to reserve 27 per cent of the seats for OBCs.

The NCMEI Act makes it clear that the NCMEI was created to bring into existence a new dispensation for expeditious disposal of cases relating to the grant of affiliation by affiliating universities, the violation/deprivation of constitutionally mandated educational rights of minorities, the determination of minority status of an educational institution and grant of no objection certificate (NoC), and so on. It is a quasi-judicial tribunal and has the jurisdiction, powers, and authority to adjudicate upon disputes without being bogged down by the technicalities of the Code of Civil Procedure.
7.3.1. Criticism over the NCMEI decision declaring Jamia Millia Islamia as minority Institution:

Critics of the order argue that the character of a Central University can be changed only by Parliament through an amendment to the Act that created it in the first place. Besides, the NCMEI Act is silent on whether the government is bound by the NCMEI’s recommendations, especially in a case where the basic University.

Critics are of the opinion the decision has been announced appears to be extremely naive and it will not stand strict judicial scrutiny if the case reaches the High Court. It seems obvious that the decision will be challenged in the High Court.

7.4. Researcher’s observation:

In Azeez Basha’s Case the fact that Aligarh Muslim University, a Central University was an Educational Institution was not disputed by any contesting party. Therefore, the Court held the words "educational institutions" are of very wide import and would include a university also. This was not disputed on behalf of the Union of India and therefore it was accepted that a religious minority had the right to establish a university under Article 30(1).

Section 11 refers to Functions of NCMEI. Section 11, Functions of Commission—Notwithstanding anything contained in any other law for the time being in force, the Commission shall----(f) decide all questions relating to the status of any institution as a Minority Educational Institution and declare its status as such.

Thus prima facie it seems that NCMEI has performed its function under section 11(f).
7.5. Testing of the Hypothesis

The Researcher began the study with eight hypotheses. Researcher will hereby test the hypothesis on the basis of the outcome of her research.

Hypothesis 1: The Constitution of India consists of adequate provisions to safeguard the interest of minorities; the positive spirit is lacking in their implementation.

The hypothesis has been positive as the State authorities have not enacted any law for enforcement of educational rights of minorities.

Hypothesis 2: Government Rules and Regulations infringe the minority rights guaranteed under Article 30(1) to establish and administer educational institutions of their choice.

Minorities’ institutions in most of the cases have challenged the rules and regulations of the governing authority that infringe their educational rights. Thus it is evident that minority rights have been curtailed due to various rules and regulations by the Government.

Hypothesis 3: The Rules and Regulation of various bodies like Universities, U.G.C., State Board, etc interferes with the minority rights.

The rules and regulations of various regulatory authorities have not incorporated rules to accommodate the dictates of Article 30(1). The rules and regulations imposed are universally applicable for all the institutes including minorities. Minorities’ educational rights to establish and administer institutions of their choice are infringed.

Hypothesis 4: Acquiring affiliation, recognition or approval by minority educational institution is Herculean task.

Offices of State and National minorities’ commissions have been receiving many complaints of denial of permission or refusal to issue “NOC” for establishing
educational institutions for technical and professional training and for regularization of already set institutions. Recognition of existing minority institutions or granting of minority status becomes difficult task.

The Kerala legislature has passed a law which requires two additional criteria, beyond the population of minority to be less than 50 % of the State, for according minority status. These additional criteria is that the number of the professional college or institutions run by the linguistic or religious minority community in the State to which to which the college or institution belongs shall be proportionately lesser than the number of professional college or institutions run by the non-minority community in that state. The other additional criterion is that the number of students belonging to the linguistic or religious minority community to which the college or institution belongs undergoing professional education in all professional colleges or institutions in the state shall be proportionately lesser than the number of students belonging to the non –minority community undergoing professional education in all professional colleges or institutions in the State. It is mandatory to fulfill all the conditions to avail minority status. Thus seeking implementation of Constitutional guarantee has been a herculean task.

Hypothesis 5: There are various provisions for the benefit of the minorities but incidents of infringement by State authorities are common.

Two sets of guidelines for the recognition, affiliation, granting of minority status, etc were issued in 1986 and 1989 respectively, but the State government did not take cognizance of the guidelines.

Hypothesis 6: Judicial interpretation and trend has changed considerably with time, which at times has not been in favour of minority educational institutions. Earlier judicial trend recognised minority educational rights as absolute and held that regulations can be imposed in the interest of the minority educational institution and not in the interest of nation. Since St Stephan’s case the court has held that regulations can be imposed in the interest of Nation even though it
amounts to curtailment of minority rights. Thus the hypothesis is found to be correct.

Hypothesis 7: At the global level the term ‘minority’ has a wider meaning whereas in India it is limited to a few sections of the society.

At the global level minority relates to as ‘a group numerically inferior to the rest of the population of the State, in a non dominant position, whose members posses ethnic, religious, or linguistic characteristics differing from the rest of the population’.

The Constitution of India does not define ‘minority’ and give no clue for the level of determination of minority status. It speaks two category of minorities viz. religious and linguistic, but does not provide list of minorities. There is no parliamentary legislation either specifying the religious or linguistic minorities in the country. The National Commission for minorities Act 1992 enables the central government to notify the five religious communities’ viz. Muslims, Christians, Sikhs, Buddhists and Parsis as minorities for the purpose of Act only. Thus the hypothesis was found correct.

Hypothesis 8: The scope of Article 30 of the Constitution guaranteeing educational autonomy to minorities has become uncertain and diluted due to the impact of inadequate legal provisions and complicated judicial interpretations.

Diluting of minorities rights has resulted mainly from the Supreme Court decisions. The Apex Court decisions have lead to whittling down of rights of minority educational institutions in the following manner:

i) It has provided for reservation of seats for non minority students in aided minority educational institutions.

ii) The Court has upheld the provision for external appellate tribunals.

iii) It has restricted the transferring of funds from educational institution to parent society.
iv) The Court has recognised State as a unit to determine minority status.

v) The Court has allowed forcing of languages on minority institutions.

vi) The Court has curtailed trans-border admissions and has allowed State’s interference with admission process.

Thus it can be said that the inadequate legal provisions and complicated judicial pronouncements has lead to diluting of rights of minority educational institutions.

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